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IN THE MATTER OF :
:
DOUBLECLICK INC. :
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AGREEMENT
between
THE ATTORNEYS GENERAL OF THE STATES OF
ARIZONA, CALIFORNIA,CONNECTICUT, MASSACHUSETTS,
MICHIGAN, NEW JERSEY, NEW MEXICO,NEW YORK,
VERMONT, AND WASHINGTON
and
DOUBLECLICK INC.

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I. INTRODUCTORY TERMS

A. Identification of Parties and Purpose

1. This Agreement (the “Agreement”) is effective August 26, 2002.
2. The Agreement is between the Attorneys General of the States of Arizona, California, Connecticut, Massachusetts, Michigan, New Jersey, New Mexico, New York, Vermont, and Washington (the “States”); and DoubleClick Inc., a Delaware corporation with main offices located at 450 West 33rd Street, New York, New York (collectively, the “Parties”).
3. Pursuant to the provisions of the respective consumer protection laws of the States^{1/}, the States have made inquiries into certain of DoubleClick’s practices in collecting and using data from and about Internet Users (as defined herein).
4. DoubleClick has voluntarily cooperated in the States’ inquiries.
5. At this time, the States have determined to conclude their inquiries and DoubleClick has agreed to a set of practices regarding certain aspects of its ad delivery services and related consumer disclosures, as detailed in these Introductory Terms, the Terms of Agreement, and the Administrative Terms (collectively, the “Terms”).
6. DoubleClick’s execution of this Agreement does not constitute an admission by DoubleClick that the company has violated any law or committed any wrongful or improper act. To the contrary, DoubleClick denies that it has violated any law or committed any wrongful or improper act.
7. To the extent that a First-party Web site, as defined herein, or its authorized agent, is an Affiliate of DoubleClick as defined herein, DoubleClick assumes joint-and-several liability for any harm arising from such Affiliate’s acts that do not comport with the Terms.

B. Definitions for Purposes of this Agreement

8. Capitalized terms used herein shall, for purposes of this Agreement, have the meanings specified in this Section I.B. The meaning assigned to a defined term applies to singular and plural uses of the defined term, unless specified otherwise.
9. “Ad Delivery Business” has the meaning specified in paragraph 91 hereof.

^{1/} Ariz. Rev. Stat. §§ 44-1521 *et seq.*; Cal. Bus. and Professions Code, §§ 17200 *et seq.* and 17500 *et seq.*; Conn. Gen. Stat. § 42-110j; Mass. Gen.L. c. 93A, §§ 2, 4; Mich. Civ.L. §§ 445.901 *et seq.*; N.J. Stat. Ann. §§ 56:8-1 *et seq.* and 56:8-3; New Mex. Stat. Ann. §§ 57-12-1 *et seq.*; N.Y. Gen. Bus.L. Art. 22-A; N.Y. Exec.L. §§ 63(12, 15); 9 Vt. Stat. Ann. §§ 2451 *et seq.*; Rev. Code Wash. §§ 19.86 *et seq.*

10. “Affiliate” means, with respect to DoubleClick Inc., any Person, as defined herein, directly or indirectly controlled by DoubleClick Inc. For purposes of this definition, the term “control” shall mean the power to direct or cause the direction of the management of such person whether through the ownership of voting securities or by contract.

11. “Agreement” has the meaning specified in paragraph 1 hereof.

12. “Automatic User Data” means information generated by the Internet activity of a User (as defined herein) that the User’s Internet software, such as a Browser (as defined herein) may transmit to a Web site with which the User comes in contact, including Third-party Ad Services (as defined herein) and may, but does not necessarily, include: the URL (as defined herein) of current Web page, the URL (as defined herein) of the last Web page visited, the day and time, as well as the User’s ISP (as defined herein), IP Address (as defined herein), Browser software, and operating system version.

13. A “Browser” is software installed on a User’s personal computer, and which the User employs to communicate electronically on a digital network such as the Internet to access data collections such as those presented at First-party Web sites, as defined herein.

14. A “Click” means an act by which a User on a digital network transmits a request or information to a digitally networked Person such as the Web, as defined herein.

15. “Clickstream” means data reflecting a sequence of actions taken by a User while connected to a digital network. Clickstream may include a record of the steps taken by a User to visit a Web page, execute an online search, or fill out a Web-based form. “Clickstream data” is a record of any part of a User’s Clickstream.

16. A “Cookie” is a small data file that a Web site can place on a User’s computer to allow the Web site to store and retrieve data about that particular User, so that the Web site can provide or perform a variety of tasks and functions.

17. “Covered Activities” has the meaning set forth in paragraph 91.

18. “DoubleClick” means DoubleClick Inc., its principals, officers, directors, servants, agents and employees.

19. “DoubleClick Online Ad Serving Cookie” has the meaning set forth in paragraph 52.c. hereof.

20. “DoubleClick’s Web site” means the Web sites owned or controlled by DoubleClick, including *www.doubleclick.net*, *www.doubleclick.com*, and *www.privacy-choices.org*.

21. “First-party Web site” is the Web site a User affirmatively requests to visit, for example, by typing in the site’s URL or by clicking on a hyperlink to the site.

22. “Gateway Site” means a Web site, not wholly controlled by a Third-party Ad Service that provides information about and a link to the Third-party Ad Service. For example, the privacy policy of a First-party Web site might disclose that it uses unnamed Third-party Ad Services. Along with the disclosure, the First-party Web site might provide the User with a link to a Gateway Site that offers information about and links to many Third-party Ad Services. The Network Advertising Initiative’s Web site at www.networkadvertising.org is an example of a Gateway Site.

23. “IP Address” (Internet Protocol address) is an identifier for a computer or device on a network such as the Internet. Each Internet User’s computer has an IP Address, which is what Web servers use to transmit information to individual personal computers.

24. “ISP” (Internet Service Provider) means a company that provides Internet access to Users.

25. “Multi-Site/Multi-Session Ad Serving” means Online Ad Delivery to a specific Browser based on certain characteristics of a User(s)’ online activity across multiple unrelated First-party Web sites and over time. Multi-Site/Multi-Session Ad Serving does not include the selection of an Online Ad when the selection is based upon: (1) whether or not a particular Online Ad or sequence of ads has been previously delivered to that individual Browser (such as frequency capping and sequence control); or (2) the proprietary information of a client or an advertiser.

26. “Multi-Site/Multi-Session Category” means a Third-party Ad Service classification of a User’s browsing activities, for purposes of Multi-Site/Multi-Session Ad Serving, into types of inferred interests or behaviors that may be attractive to advertisers.

27. “Multi-Site/Multi-Session Score” consists of a score in one or more of Multi-Site/Multi-Session Categories associated with a Cookie.

28. “Non-PII” (Non-Personally Identifiable Information) means data collected about an Internet User that does not contain and is not associated with PII by DoubleClick.

29. “Online Ad” means an online advertisement that a Third-party Ad Service displays on a Web page in response to a request from an Internet User’s Web Browser on a personal computer, using the HTTP protocol.

30. “Online Ad Delivery” means the technological process for the selection and delivery by a Third-Party Ad Service of an Online Ad to an Internet User’s Web Browser for display using the HTTP protocol.

31. “OPM Category” has the meaning specified in paragraph 56.a. hereof.

32. “OPM Score” has the meaning specified in paragraph 56.b. hereof.

33. “Parties” has the meaning specified in paragraph 2 hereof.

34. “PII” (Personally Identifiable Information) means data that identifies or locates a particular person 2/, including but not limited to name, address, telephone number, email address, social security number, bank account number, or credit card number.

35. “Person” means an individual, corporation, partnership, association, trust or other entity or organization.

36. “Sensitive Data” categorically includes but is not limited to data related to an individual’s health or medical condition, sexual behavior or orientation, or detailed personal finances, information that appears to relate to children under 13, racial or ethnic origin, political opinions, religious or philosophical opinions or beliefs and trade union membership; PII obtained from individuals who were children under the age of 13 at the time of data collection; and PII otherwise protected under federal law (for example, cable subscriber information or video rental records).

37. “States” has the meaning specified in paragraph 2 hereof.

38. “Terms” has the meaning specified in paragraph 5 hereof.

39. “Third-party Ad Service” means a business that is a service-provider or vendor to a First-party Web site, not owned or otherwise under the control of that First-party Web site, and whose services may include Online Ad Delivery. For example, during or after a User’s visit to a First-party Web site, the First-party Web site may link the User to a Third-party Ad Service, which then transmits Online Ads to the User’s computer.

40. “URL” (Uniform Resource Locator) means the unique address by which a User can identify and access a digitally networked collection of data such as a Web page.

41. “User” means a person who uses a digital-network-enabled device such as a personal computer with a Browser to access or receive content.

42. “User Data” means any individual-level information generated by an individual User’s Internet activity, and can include Automatic User Data, Clickstream Data, and any unique identifier a Web site stores in a Cookie on the User’s computer. User Data does not include aggregate non-PII.

43. The “Web” (World Wide Web) is a layer of the Internet, a multi-layered facilitator for the exchange of information. For Users, the Web most visibly consists of Web pages written in a common format, each of which has its own URL, and which are organized into Web sites.

2/ Data is not PII for purposes of DoubleClick’s obligations under this Agreement if DoubleClick does not become aware of the identity or location of, or identify or locate, a particular person as a result of such use. Data that is PII for one party may not constitute PII for another.

44. “Web site” means a file or collection of files identified by a common domain name and located on a common server(s), each of which files contains a Web object or collection of objects that provide content or functional instructions for User-accessible Web pages. A User, by using the Browser on a personal computer, can communicate on the Internet to access these files and can then copy and display or execute them in a predictable fashion as Web pages or parts of Web pages.

II. BACKGROUND

45. DoubleClick, incorporated January 23, 1996, is a publicly-traded company that offers services related to Internet advertising.

a. DoubleClick is a Third-party Ad Service. DoubleClick derives revenue from its ability to record, analyze and target Online Ads based upon User Data, to “help marketers deliver the right message, to the right person, at the right time, while allowing Web publishers to maximize their revenue and build their business in the process.”^{3/}

b. DoubleClick enters into numerous business agreements with advertisers and their agents who want to advertise on the Internet, and with First-party Web sites that want to offer Online Ads on their Web pages.

c. DoubleClick uses its DART proprietary technology to display Online Ads to Users of First-party Web sites, and to collect and analyze User Data.

III. FINDINGS

46. Users access the Web via the Internet through an ISP by using Web Browsers such as Netscape Navigator or Microsoft’s Internet Explorer on individual computers.

47. Users can access Web pages in a variety of ways. They can enter the page’s URL, Click on an embedded link (a “hyperlink”) to that page, or use a search engine, such as Alta Vista or Yahoo!, to find pages through a search based on words entered by the User. By doing so, a requested Web page is delivered to the IP Address for that User at that time.

48. Each time a User interacts with a Web site, the User’s Browser may transmit the User’s Automatic User Data to the Web site.

49. The Web pages requested by a User often contain Online Ads served by Third-party Ad Services, such as DoubleClick.

50. When a User accesses a First-party Web site that uses a Third-party Ad Service, the First-party Web site’s server instructs the User’s Browser to communicate with the

^{3/} DoubleClick Inc. Form 10-K for the Fiscal Year Ending Dec. 31, 2000 (filed March 12, 2001).

Third-party Ad Service and instruct it to return an Online Ad for the User's Browser to incorporate into the display of Web content.

51. Online Ads delivered by Third-party Ad Services, including DoubleClick, may be "targeted," meaning that the Ad Service selects a particular ad based on various criteria, including User characteristics it infers from User Data.

52. DoubleClick describes its Online Ad Delivery technology as follows:

a. DoubleClick's technology determines which Online Ad to deliver based on Non-PII User Data, including Automatic User Data.

b. When a User first visits a Web page that has Online Ads delivered by DoubleClick, a DoubleClick Online Ad Serving Cookie is sent to the Browser. Each time an Online Ad is delivered to that User's Browser, it is recorded (in binary format) in DoubleClick's DART Web ad serving log files.

c. A "DoubleClick Online Ad Serving Cookie" is a Cookie DoubleClick uses to select ads for Online Ad Delivery. The DoubleClick Online Ad Serving Cookie contains a randomly assigned unique identifier but does not contain PII, nor does DoubleClick associate it with PII.

d. DoubleClick uses its Online Ad Serving Cookies to uniquely identify particular Browsers so it can correlate Non-PII User Data it collects from Users during its delivery of banner ads.

53. DoubleClick provides Users with the ability to opt out of having their Browsers associated with a unique DoubleClick Online Ad Serving Cookie. Once a User opts out and continues using the same Browser software, DoubleClick represents that it will not recognize the User as a uniquely-identifiable visitor for Online Ad Delivery purposes.

54. DoubleClick uses User Data described in paragraph 52(d) to provide services connected with Online Ad Delivery. DoubleClick represents that:

a. DoubleClick does not use PII in connection with Online Ad Delivery.

b. DoubleClick collects and analyzes only Non-PII User Data. DoubleClick does not associate it with PII.

c. DoubleClick may associate Non-PII User Data with a DoubleClick Online Ad Serving Cookie.

d. In most cases, DoubleClick only uses User Data to provide services on behalf of the advertiser or First-party Web site in connection with a User's interaction with that party.

55. In other circumstances, a First-party site may transmit Non-PII User Clickstream Data to DoubleClick under controlled conditions governed by contract between DoubleClick and the First-party Web site. These are cases in which the First-party Web site requests services DoubleClick offers that include its compilation and analysis of Non-PII User Data, including Clickstream Data, that DoubleClick has collected from uniquely-identified Users interacting with various First-party Web sites over time for purposes of Multi-Site/Multi-Session ad serving.

56. According to the Network Advertising Initiative (www.networkadvertising.org), DoubleClick and other Third-party Ad Services use the term “OPM” (Online Preference Marketing) to describe their Multi-Site/Multi-Session Ad Serving Services. DoubleClick describes its OPM activities as follows:

a. “OPM Category” means a DoubleClick classification of a User’s browsing activities, for purposes of Multi-Site/Multi-Session Ad Serving, into types of inferred interests or behaviors that may be attractive to advertisers. OPM Categories do not contain or reflect PII or Sensitive Data. OPM Category, as defined by DoubleClick, is identical to Multi-Site/Multi-Session Category as defined in this Agreement.

b. “OPM Score” consists of a score in one or more of DoubleClick’s OPM Categories associated with a DoubleClick Online Ad Serving Cookie. In simplified terms, an OPM Score is created by assigning points to an OPM Category each time a User with a DoubleClick Online Ad Serving Cookie visits a First-party Web site that participates in DoubleClick’s OPM product. (As described above, however, once a User has opted out on a Browser, no OPM Score can be associated with that Browser.) OPM Score, as defined by DoubleClick, is identical to Multi-Site/Multi-Session Score as defined in this Agreement.

c. The OPM Scores may be based on Non-PII Clickstream data generated by a User during the User’s visits, over time, to various First-party Web site clients that participate in OPM.

d. OPM Scores can provide DoubleClick with an additional method to select the appropriate Online Ad to serve to a User whose Browser has been uniquely associated with a DoubleClick Online Ad Serving Cookie.

e. Before DoubleClick can collect, compile, or analyze any User Data for OPM, a contract must be executed between DoubleClick and the First-party Web site and the DoubleClick Privacy Department must review the First-party Web site’s privacy policy for compliance with the privacy disclosures required by DoubleClick.

f. When DoubleClick creates OPM Scores, it ensures that Users are provided notice concerning the data DoubleClick collects, the manner in which DoubleClick uses OPM scores, and an opportunity to opt out of such use.

g. DoubleClick does not collect or use PII in connection with OPM.

57. DoubleClick has committed to undergo periodic reviews by an independent firm to ensure that it is in compliance with the Network Advertising Initiative's Self-Regulatory Principles governing OPM, which are available at www.networkadvertising.org.

IV. TERMS OF AGREEMENT

A. Disclosure

58. DoubleClick will post an online privacy policy that discloses its User Data practices.

59. DoubleClick will ensure that its disclosures with respect to its business and practices, including but not limited to its disclosures regarding Cookies, the DoubleClick Network, Sensitive Data, data retention, and its affiliation with and ability to monitor the policies and practices of its First-party Web site clients, are accurate and in compliance with the respective States' laws referred to in paragraph 3.

60. In all instances in which these Terms commit DoubleClick to provide information to Users or to cause information to be provided to Users on DoubleClick's Web site, DoubleClick may, in addition, provide the information on the Web site of any appropriate Gateway Site or trade association to the extent those organizations provide space for statements by DoubleClick.

B. First-Party Web Site Notice

61. DoubleClick will compile User Data for purposes of Multi-Site/Multi-Session Ad Serving only pursuant to a contract that requires the First-party Web site client to post a privacy policy that clearly and conspicuously discloses:

- a. the type of information DoubleClick does or does not collect or the type of information such First-party Web site can cause to be transmitted to DoubleClick;
- b. DoubleClick's uses of such User Data;
- c. the means by which the User can opt out of such data use by DoubleClick;
- d. the means by which the User can access DoubleClick's privacy disclosures.

62. For clients who contribute to or utilize DoubleClick's services related to collecting User Data for purposes of Multi-Site/Multi-Session Ad Serving, DoubleClick will maintain reasonable procedures to ensure its clients' compliance with contract provisions described in paragraph 61. This paragraph shall be effective for a period of four (4) years from the execution date of this Agreement. Such procedures will include the following:

a. Before DoubleClick collects any User Data from such a client for purposes of Multi-Site/Multi-Session Ad Serving, DoubleClick will review and approve the Web site's posted privacy policy for compliance with the disclosure requirements set forth in paragraph 61.

b. Subsequently, DoubleClick will periodically monitor the Web site's posted privacy policy for continued compliance.

63. For a period of four (4) years from the execution date of this Agreement when a DoubleClick First-party Web site client who contributes to or utilizes DoubleClick's services related to collecting User Data for purposes of Multi-Site/Multi-Session Ad Serving makes material changes to its contractually required disclosures of the kind identified in paragraph 61:

a. DoubleClick will be deemed to have received notice of such a change when DoubleClick receives actual notice either by manual audit or via electronic review as described in paragraph 64 below, whichever is earlier.

b. When DoubleClick receives such notice, it will review the client's privacy policy to ensure the client continues to comply with its contractually required disclosure obligations.

c. Should the client's privacy policy fail to comply with the client's disclosure obligations, DoubleClick will, within fourteen (14) days after receiving notice, request that the First-party Web site make the necessary amendments.

d. If the client does not make the requested amendments within fourteen (14) days of being notified by DoubleClick, DoubleClick will suspend the collection of User Data for purposes of Multi-Site/Multi-Session Ad Serving from the client until such time that the client's privacy policy is again in compliance with its disclosure obligations.

e. In lieu of the notice and correction provisions in paragraphs 63(c) and (d), above, DoubleClick, in its sole discretion, may, but is not obligated to, immediately suspend the collection of User Data for purposes of Multi-Site/Multi-Session Ad Serving from the client.

64. As part of DoubleClick's monitoring efforts, it will take reasonable steps to develop technology, using a spider^{4/} or other means, to monitor whether the DoubleClick opt-out link is present and properly working at the sites of First-party clients referred to in paragraph 61. This paragraph shall be effective for a period of four (4) years from the execution date of this Agreement.

65. In all cases in which DoubleClick collects User Data for the purposes of its Online Ad Delivery services solely on behalf of a particular client, DoubleClick will include in

^{4/} A "spider," also known as a "crawler," is a program designed to automatically access certain Web pages, retrieve content from the pages, and submit the content to another program for recording or analysis.

its standard contract a provision that requires, and will take commercially reasonable steps to encourage, its First-party Web site clients to post a privacy policy that offers Users clear and conspicuous notice that the First-party Web site uses a Third-party Ad Service and to provide Users with a link to DoubleClick's privacy policy or to a Gateway Site to allow Users to opt out. This paragraph shall be effective for a period of four (4) years from the execution date of this Agreement.

C. Data Use

66. DoubleClick will collect and use User Data only in a manner consistent with the representations DoubleClick made at the time of collection.

67. DoubleClick will not include in any Multi-Site/Multi-Session Score information that includes or reflects PII or Sensitive Data. This paragraph shall be effective for a period of four (4) years from the execution date of this Agreement.

68. When DoubleClick provides services that utilize a client's proprietary User Data, DoubleClick will take reasonable measures to ensure that its clients do not cause PII to be transmitted to DoubleClick for use in Online Ad Delivery, or associated with a DoubleClick Online Ad Serving Cookie. Such measures will include the following:

a. In any client contract for a product that can transmit or utilize a client's proprietary User Data, the contract will include language governing the client's transfer of PII.¹

b. DoubleClick will notify the client and may suspend User Data collection and/or terminate the business relationship for any known breach of such provisions if that breach is not remedied.

69. The requirements in paragraphs 67 and 68 are also applicable to User Data collected for purposes of Multi-Site/Multi-Session Ad Serving from Online Ads delivered into email messages using the DART Web ad serving technology. This paragraph shall be effective for a period of four (4) years from the execution date of this Agreement.

70. DoubleClick will take reasonable measures to avoid acquiring PII inadvertently transmitted by a Web site. For example, DoubleClick may continue its practice of truncating a portion of the URL information from data transmitted by First-party Web site clients as one method to avoid inadvertently acquiring PII.

71. DoubleClick will undertake reasonable efforts to educate its clients in technical and business practices that promote Users' privacy. This paragraph shall be effective for a period of four (4) years from the execution date of this Agreement.

D. Data Minimization and Purging Policy

72. DoubleClick will continue to take reasonable steps consistent with industry best practices to ensure that all User Data resides on secure servers or other equipment.

73. DoubleClick will ensure that DART Web ad serving log files containing User Data that are more than three (3) months old are archived in a medium not directly accessible to a CPU. This paragraph shall be effective for a period of four (4) years from the execution date of this Agreement.

74. DoubleClick will access User Data in the offline DART Web ad serving log files solely for administrative purposes such as auditing, disaster recovery, system security, record reconstruction to resolve an accounting dispute, maintenance and testing. Aside from access for such purposes, in no event will such data be mined by DoubleClick for any use that does not conform with disclosures made by DoubleClick at the point of collection of such data. This paragraph shall be effective for a period of four (4) years from the execution date of this Agreement.

75. On at least a quarterly basis, DoubleClick will purge all back-up tapes of DoubleClick's DART Web ad serving log files containing User Data that are more than thirty (30) months old.

76. DoubleClick will employ reasonable technical and employee education procedures and mechanisms to safeguard the security and integrity of User Data against inadvertent corruption, loss, or disclosure, and from outside or inside intrusion, tampering or unauthorized use.

E. Data Sharing

77. DoubleClick will not share User Data collected on behalf of one First-party Web site client with any Person other than that First-party client or, as directed by the First-party client, with a party that is bound to observe the obligations of the First-party regarding the User Data. This paragraph shall be effective for a period of four (4) years from the execution date of this Agreement.

78. When DoubleClick acts as an agent to acquire and process User Data on behalf of a particular First-party Web site client, DoubleClick will not use the information for any purpose other than that authorized by that client.

79. In any client contract for products and services in which DoubleClick acts as an agent on behalf of a particular First-party Web site client, the contract will include language governing ownership and use of User Data by DoubleClick and such client.ⁱⁱ

F. Access and Other Disclosures

80. At the time that DoubleClick employs Multi-Site/Multi-Session Ad Serving, DoubleClick will use reasonable efforts to develop technology that allows a User to securely view any Multi-Site/Multi-Session Categories associated with that User's DoubleClick Online Ad Serving Cookie on the User's device.

81. As long as DoubleClick uses DoubleClick Ad Serving Cookies, DoubleClick's privacy policy will provide the following information for any User for which DoubleClick associates a Multi-Site/Multi-Session Category with the User's DoubleClick Online Ad Serving Cookie:

- a. a reasonable means to delete the User Data; or
- b. a means to nullify the utility of the DoubleClick Online Ad Serving Cookie associated with the User Data; or
- c. instructions on configuring commonly-distributed Browsers to nullify the utility of the DoubleClick Online Ad Serving Cookie associated with the User Data.

82. DoubleClick will provide information in its privacy policy to help Users understand generally applicable issues that might negate their privacy choices. For example, regarding DoubleClick's opt-out mechanism, the company will explain that:

- a. Should the User delete Cookie files, the User risks erasing the DoubleClick opt-out Cookie, thus nullifying the User's prior opt-out choice.
- b. Should the User set his or her Browser parameters to reject Cookies, any subsequent opt-out choice will not take effect.

83. Regarding the merger by DoubleClick of PII with Non-PII Clickstream across Web sites or with a DoubleClick Online Ad Serving Cookie:

- a. DoubleClick affirms that it has not performed such a merger.
- b. In the event DoubleClick hereafter proceeds to collect PII for such merger, DoubleClick will not perform such a merger without providing prior notice and choice to the User.
- c. DoubleClick will use a User's PII only in a manner consistent with the representations DoubleClick made at the time it collected the information, unless DoubleClick first obtains the User's explicit consent.

G. Notice of Changes

84. So that Users can receive timely notice of material changes to DoubleClick's privacy policy without bearing the burden of periodically reviewing DoubleClick's public disclosures to check for changes, DoubleClick will provide Users with the ability to opt in to an email notification system maintained by DoubleClick. This paragraph shall be effective for a period of four (4) years from the execution date of this Agreement.

a. If a User provides an email address in order to receive change notices, the email address can be used for no other purpose without the User's explicit permission.

b. DoubleClick will collect data from the delivery of such emails solely for the purpose of creating aggregate reports and maintaining its change notification mailing list.

85. DoubleClick will provide clear and conspicuous notice on the top of the DoubleClick privacy policy of the effective date of the disclosures including the date of the last substantive change. In addition, DoubleClick will provide clear and conspicuous notice on the home page of the *www.DoubleClick.net* and *www.DoubleClick.com* Web sites and on the top of the DoubleClick privacy policy at least thirty (30) days before the effective date of that change. This paragraph shall be effective for a period of four (4) years from the execution date of this Agreement.

86. DoubleClick will provide details of new or changed practices on the *www.DoubleClick.net* and *www.DoubleClick.com* Web sites. DoubleClick will provide notice of the effective date of the change. This paragraph shall be effective for a period of four (4) years from the execution date of this Agreement.

87. DoubleClick will provide notice to its clients at least seven (7) days in advance of any change in the privacy policy or in DoubleClick's practices that would materially affect the accuracy of the client's disclosures of its use of DoubleClick's services. This paragraph shall be effective for a period of four (4) years from the execution date of this Agreement.

88. DoubleClick will maintain, on a forward-going basis, an auditable record of an exact copy of all privacy policies that have been posted on its *www.DoubleClick.net* and *www.DoubleClick.com* Web sites. DoubleClick's records will document the publication date, location, and content of the privacy policy.

89. DoubleClick will retain and make available upon request copies of prior privacy policies posted on its *www.DoubleClick.net* and *www.DoubleClick.com* Web sites.

H. Verification

90. DoubleClick will provide Users with reasonable means to verify DoubleClick's compliance with its representations and the Users' choices as follows:

a. DoubleClick will retain an independent third party firm to conduct three (3) compliance reviews to verify DoubleClick's compliance with the objectively verifiable Terms of this Agreement. This paragraph shall be effective for a period of four (4) years from the execution date of this Agreement.

b. DoubleClick will clearly and conspicuously disclose, in its privacy policy, the reviewer's conclusions. This paragraph shall be effective for a period of four (4) years from the execution date of this Agreement.

c. DoubleClick will provide the States with a description of the reviewers' protocol for reviewing the Terms of this Agreement. This paragraph shall be effective for a period of four (4) years from the execution date of this Agreement.

d. DoubleClick will provide the States with a summary of the final compliance reviews findings set forth in paragraph 90(a).

e. DoubleClick will provide to the States a copy of any report of an independent third party firm retained to conduct the periodic reviews to verify DoubleClick's compliance with the Network Advertising Initiative's Self-Regulatory Principles governing OPM. DoubleClick also will provide the States with copies of any other compliance reviews conducted by an independent firm relating to DoubleClick's privacy practices and the Terms of this Agreement. This paragraph shall be effective for a period of four (4) years from the execution date of this Agreement.

f. Annually, for four (4) years following the execution of this Agreement, DoubleClick will forward to the States an affidavit confirming that DoubleClick is in full compliance with all of the Terms of this Agreement. A DoubleClick officer authorized to bind DoubleClick will execute the affidavit. DoubleClick's confirmation of compliance will include the following statement: "In the event that DoubleClick violates any Term of this Agreement, any of the States may commence an action or proceeding under any consumer protection statute relevant to this Agreement, and in which action or proceeding evidence of a violation of this Agreement will constitute prima facie evidence of a violation of the applicable law."

V. ADMINISTRATIVE TERMS

A. Scope and Effect of Agreement

91. "Covered Activities" means DoubleClick's business of delivering Online Ads on behalf of Web publishers and advertisers. Covered Activities consists of the ad delivery technology business comprised of the DART for Publishers Service ("DFP") and the DART for Advertisers Service ("DFA") (collectively, "Ad Delivery Business"), and does not include email services unless otherwise specifically stated herein. The DFA Spotlight 1 x 1 pixel is a component of the Ad Delivery Business.

92. "Covered Period" means January 23, 1996 to the present.

93. In the event of a disposition of the Ad Delivery Business or any portion thereof, this Agreement will be binding upon a successor or assign with respect only to the operation of the acquired Ad Delivery Business, and shall not be deemed to apply to any other business of such successor or assign.

94. Conditioned upon DoubleClick's fulfillment of the Terms of this Agreement, the States, pursuant to their respective laws referred to in paragraph 3, agree to cease and/or refrain from initiating unfair or deceptive practices actions that arise from the Covered Activities during the Covered Period.

95. The obligation this Agreement imposes on a State to cease and/or refrain from initiating statutory proceedings, as described in paragraph 94:

- a. applies only to actions arising from the Covered Activities that occurred during the Covered Period;

- b. is based on DoubleClick's representation and warranty, which constitute a Term of this Agreement, that DoubleClick has complied in all material respects with the States' requests for information and documents regarding DoubleClick's activities during the Covered Period. A subsequent discovery that DoubleClick failed to comply shall constitute a violation of this Term, regardless of any claim by DoubleClick that the failure resulted from its negligence or inadvertence;

- c. is based on the accuracy of representations attributed to DoubleClick in this Agreement;

- d. does not extend to actions based upon a State's reasonable belief that material facts exist that the State, through reasonable effort, could not have discovered prior to its execution of this Agreement;

- e. applies only to actions in which the State identifies DoubleClick as a party.

96. This Agreement shall be deemed an assurance of voluntary compliance or discontinuance and serves as a separate agreement between DoubleClick and each State and, as to each State, shall be governed by the laws of that State. The actions of any one State shall not diminish the rights under this Agreement of any of the other States.

97. This Agreement constitutes the entire agreement between the States and DoubleClick as to the Covered Activities for the Covered Period. This Agreement replaces and succeeds any prior agreements between any State and DoubleClick as to the Covered Activities for the Covered Period.

98. The execution of this Agreement by a State shall not be deemed or construed as an approval by the State of any of DoubleClick's activities or practices, past or present, and DoubleClick shall not make any representations to the contrary.

99. In the event that a Person becomes a new Affiliate of DoubleClick, whether by acquisition or otherwise:

a. the Terms shall not apply to the new Affiliate's activities to the extent that the Affiliate's compliance with the Terms would cause it to breach its pre-existing contractual obligations;

b. the Terms shall not apply during a period in which DoubleClick will make reasonable efforts to conform the new Affiliate's activities to the Terms as soon as is practicable, provided that:

(i) if, after six months, DoubleClick cannot affirm that the new Affiliate's activities conform to the Terms, DoubleClick will provide the States with an explanation of the nature of and reasons for the Affiliate's non-conformance and will provide an estimate of the amount of time DoubleClick reasonably expects will be required to conform the Affiliate's activities to the Terms;

(ii) in no event shall the period of the new Affiliate's post-acquisition non-conformance exceed fifteen (15) months

c. provided that, for the duration of any periods indicated by paragraphs 99(a) and 99(b) DoubleClick will:

(i) provide notice to users that DoubleClick's privacy representations do not apply to the activities of the new Affiliate;

(ii) provide such notices by any means through which DoubleClick and the new Affiliate have committed or are otherwise obligated to provide notice of practices implicated by these Terms, including, without limitation, on DoubleClick's and the new Affiliate's Web sites, if applicable;

d. provided that nothing in these Terms shall be construed to release DoubleClick or the new Affiliate from its respective obligation to comply with:

(i) privacy-related representations and commitments made by the new Affiliate at any time before DoubleClick publicly represented that DoubleClick's privacy representations apply to the Person's practices;

(ii) all applicable consumer protection laws referenced in paragraph 3.

B. Construction of Agreement

100. The headings in this Agreement serve to identify sections of the Agreement, and otherwise have no legal significance or effect on the interpretation of this document.

101. Should any court of competent jurisdiction vitiate or nullify any part of the Findings, that court's decision shall not vitiate or nullify any of the Terms.

102. DoubleClick waives all objections to the legal effect and enforceability of the Terms.

103. Should any court of competent jurisdiction decide that any part of the Terms is invalid, void, or unenforceable, the remaining parts of the Terms shall continue to be enforceable, and that court's decision shall be interpreted to preserve the enforceability of the remaining Terms as much as possible.

104. Nothing contained in this Agreement shall be construed to limit or affect the rights of any persons or entities who are not Parties to this Agreement.

105. The Parties may execute this Agreement by signing counterpart copies of this Agreement. Each counterpart copy constitutes an original, and all counterpart copies together constitute one and the same agreement.

C. Modification of Terms

106. This Agreement may not be modified, supplemented, or superseded unless the Parties document such an intent by executing and delivering a written agreement.

107. For DoubleClick to obtain a modification of this Agreement other than a modification as described in paragraph 109, DoubleClick will send a written request for modification to each of the States. Such request will include:

a. a cover letter that prominently recites the text of paragraphs 107, 108, and 109 of this Agreement;

b. an executed copy of this Agreement;

c. a statement by DoubleClick summarizing DoubleClick's assessment of the impact the requested modification would have on:

(i) a User's ability to receive notice that the User has interacted with DoubleClick;

(ii) a User's ability to access DoubleClick's disclosures about its practices;

(iii) a User's ability to access and control User Data in DoubleClick's possession;

(iv) a User's ability to control DoubleClick's future collection of User Data;

(v) a User's ability to verify DoubleClick's compliance with its representations;

(vi) any other issues arising from DoubleClick's obligations under this Agreement.

108. The States, upon receiving a modification request pursuant to paragraph 107, will respond as follows:

a. The Attorney General of the State of New York will coordinate the States' response to DoubleClick's request for modification.

b. The States will, within ten (10) business days of receiving such a request, attempt to render a decision on DoubleClick's request and will communicate to DoubleClick the status of such efforts.

c. The States will, if not having rendered a decision within the ten business days:

(i) request such information as the States deem necessary to render a decision within an additional five (5) business days after receiving the requested information from DoubleClick; and

(ii) attempt to render a decision within the five additional days.

d. In no event shall consent to the modification be unreasonably withheld by the States.

e. If the States fail to communicate within 30 calendar days:

(i) the requested modification is deemed approved;

(ii) the States shall be precluded from opposing the modification except as, independent of this Agreement, authorized by the respective States' laws referred to in paragraph 3.

109. If DoubleClick requests a modification of the Agreement, and such request arises from any rule, such as legislation, regulation, guideline, formal opinion, or comparable official statement promulgated by a State or any authorized legislative or rulemaking body of that State charged with consumer protection authority, and which rule conflicts with a Term of

this Agreement such that DoubleClick cannot comply with the rule without violating a Term of this Agreement, or such that a party doing business with DoubleClick cannot comply with the rule without violating a contract provision indicated by a Term of this Agreement, the indicated State will modify the affected provision of this Agreement to the extent necessary to eliminate the conflict. Any such modification by a State will not affect the Terms or enforceability of this Agreement as to the other States.

110. The States, in reviewing a request by DoubleClick to modify this Agreement, may consider the impact the request would have on:

- a. a User's ability to receive notice that the User has interacted with DoubleClick;
- b. a User's ability to access DoubleClick's disclosures about its practices;
- c. a User's ability to access and control User Data in DoubleClick's possession;
- d. a User's ability to control DoubleClick's future collection of User Data;
- e. a User's ability to verify DoubleClick's compliance with its representations;
- f. any other issues arising from Users' material expectations.

111. Inasmuch as some of the Terms may require that DoubleClick deploy technology that has not yet been created, tested or implemented, DoubleClick agrees that it will:

- a. work in good faith to resolve any technological impediment to its implementation of the Terms of this Agreement;
- b. describe all such technologies, identify the Terms affected by them, and summarize the estimated effort, time, and resources required to create, test, or implement such technologies, by letter to the States, within six (6) calendar months of the execution of this Agreement and as often thereafter as circumstances warrant.

D. Other Terms

112. DoubleClick will, within ten business days of the execution of this Agreement, pay by certified check the sum of \$450,000 to the New York State Department of Law, to be divided among the States as they may agree, as and for investigative costs, consumer education, or any other purposes authorized by the State's respective laws.

113. To the extent that any cause of action arises under this Agreement, DoubleClick irrevocably submits to the personal jurisdiction of the state or federal courts of the

States that are parties to the cause of action; or, at the discretion of the States that are parties to the cause of action, to the personal jurisdiction of the state or federal courts of the State of New York.

114. All notices, requests, demands or other communications required by this Agreement or given pursuant to its Terms must be in writing. For any such communication to be considered delivered, it must be delivered by hand; mailed by registered or certified mail, postage prepaid; or sent by a courier service such as FedEx, UPS, or Airborne Express to all Parties besides the sender of the communication, to the each of the States as listed in the signature pages of this Agreement,

or to DoubleClick at:

with a copy to:

DoubleClick Inc.
450 West 33rd Street
New York, NY 10001
Attention: General Counsel
Fax: (212) 287-9704

Hogan & Hartson, L.L.P.
Columbia Square
555 13th Street NW
Washington, DC 20004-1109
Attention: Christine Varney, Esq.
Fax: (202) 537-5910

ⁱ Such language might consist of the following, for example:

You and Your Clients agree never to alter any DoubleClick-provided program instructions, such as ad placement tags or traffic-monitoring tags, so as to include any Visitor's PII.

ⁱⁱ Such language might consist of the following, for example:

You have the sole and exclusive right to use all data derived from Your use of the Service, for any purpose related to Your business; provided that DoubleClick may use and disclose the Visitors' data derived from Your use of the Service only (i) for DoubleClick's reporting purposes, consisting of compilation of aggregated statistics about the Service (e.g., the aggregate number of ads delivered) that may be provided to customers, potential customers and the general public and shall not include any personally-identifiable information; and (ii) if required by court order, law or governmental agency. All data derived from your use of the Service shall not be accessible to personnel within DoubleClick's media group, except with Your prior written approval.

Wherefore, the following signatures are affixed hereto:

DOUBLECLICK INC.
450 West 33rd Street
New York, New York 10001

By: _____

Name: _____

Title: _____

Attorneys for DoubleClick Inc.:

HOGAN & HARTSON LLP
555 Thirteenth Street, NW
Washington, DC 20004
Tel: (202) 637-5600

By: _____
CHRISTINE A. VARNEY, Esq.

CORPORATE ACKNOWLEDGEMENT

STATE OF NEW YORK)

:ss

COUNTY OF NEW YORK)

_____, being duly sworn, deposes and says:

I am a corporate officer of DoubleClick Inc., the entity described in and which executed the foregoing Assurance of Discontinuance. I have executed the aforesaid instrument with the consent and authority of DoubleClick Inc. and those responsible for the acts of said entity and duly acknowledge same.

Sworn to before me this
____ day of _____, 2002

Notary Public

FOR THE STATES

JANET NAPOLITANO

Attorney General

State of Arizona

NOREEN MATTS

Assistant Attorney General

DAVID SAMSON

Attorney General

State of New Jersey

GINGER PROVOST

Deputy Attorney General

BILL LOCKYER

Attorney General

State of California

SUSAN HENRICHSEN

Deputy Attorney General

PATRICIA A. MADRID

Attorney General

State of New Mexico

RICHARD WORD

Assistant Attorney General

JAMES T. FLEMING

Commissioner of Consumer Protection

RICHARD BLUMENTHAL

Attorney General

State of Connecticut

GARY HAWES

Assistant Attorney General

ELIOT SPITZER

Attorney General

State of New York

DAVID A. STAMPLEY

Assistant Attorney General

TOM REILLY

Attorney General

Commonwealth of Massachusetts

GLENN KAPLAN

Assistant Attorney General

WILLIAM H. SORRELL

Attorney General

State of Vermont

JULIE BRILL

Assistant Attorney General

JENNIFER GRANHOLM

Attorney General

State of Michigan

TRACY SONNEBORN

Assistant Attorney General

CHRISTINE O. GREGOIRE

Attorney General

State of Washington

PAULA L. SELIS

Senior Counsel

